



Convention on the Rights of the Child

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COMMITTEE ON THE RIGHTS OF THE CHILD

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WRITTEN REPLIES BY THE GOVERNMENT OF COSTA RICA TO THE LIST OF ISSUES (CRC/C/OPSC/CRI/Q/1) TO BE TAKEN UP IN CONNECTION WITH THE CONSIDERATION OF THE INITIAL REPORT OF COSTA RICA SUBMITTED UNDER ARTICLE 12, PARAGRAPH 1, OF THE OPTIONAL PROTOCOL TO THE CONVENTION ON THE RIGHTS OF THE CHILD ON THE SALE OF CHILDREN, CHILD PROSTITUTION AND CHILD PORNOGRAPHY (CRC/C/OPSC/CRI/1)*

[Replies received on 5 December 2006]

List of issues to be taken up in connection with the initial report of COSTA RICA (CRC/C/OPSC/CRI/1)

1. Please provide (if available) statistical data (including by sex, age groups, urban/rural areas) for the years 2003, 2004, and 2005 on:

(a) The number of reported cases of sale of children, child prostitution * and child pornography, with additional information on type of follow-up provided on the outcome of the cases, including prosecution, withdrawals and sanctions for perpetrators

Criminal cases in the judicial system, by title of the Criminal Code and type of complaint

Reported offence	2003	2004	2005
Paid sexual relations with minors	60	66	No data available
Attempt at paid sexual relations with minors	0	9	No data available
Dissemination of pornography	46	31	No data available
Preparation and production of pornography	2	3	No data available

Reports filed through the judicial branch with the Public Prosecutor's Office, by type of case, 2004

Type of complaint	Total	San José, First	San José, Second	Alajuela, First	Alajuela, Second	Cartago	Heredia	Guanacaste	Puntarenas	Southern region	Atlantic, region I	Atlantic, region II
Paid sexual relations with minors	66	39	8	10	1	1	2	0	0	3	0	2
Attempt at paid sexual relations with minors	9	2	0	0	0	0	0	1	1	3	0	2
Dissemination of pornography	31	19	4	0	0	1	5	0	0	2	0	0
Preparation and production of pornography	3	2	0	0	0	0	0	1	0	0	0	0

Source: Data from the Department of Statistics. Public Prosecutor's Office, judicial branch.

From 1999 to September 2006, 65 people were prosecuted for the offence of paid sexual relations. The cases broke down as follows: 35 convictions, 10 cases pending, 5 cases tried in absentia, 1 case withdrawn without prejudice to future action, 1 case with prejudice, 1 case withdrawn with diversion from prosecution, 6 indictments in criminal court pending the setting of trial dates and 6 acquittals (*Source:* Sexual Crimes Prosecutor's Office).

(b) Number of children trafficked to and from Costa Rica and trafficked within the country

2003	2004	2005
6	2	2

Source: Figures from the special prosecutor's office. Office of the Attorney-General.

(c) Number of child victims provided with recovery assistance and compensation as indicated in articles 9.3 and 9.4 of the Protocol

2003	2004	2005
A total of 222 persons affected by commercial sexual exploitation were assisted in various ways. (<i>Source:</i> Progress report on the annual operational plan for the 2003 programmes and subprogrammes of the National Child Welfare Agency (PANI))	A total of 356 teenagers affected by commercial sexual exploitation were assisted in various ways. (<i>Source:</i> Progress report on the annual operational plan for the 2004 programmes and subprogrammes of the National Child Welfare Agency (PANI))	A total of 315 child and teenage victims of sexual exploitation were assisted; these included various street children and minors receiving emergency care and special protection through specialized centres of the National Child Welfare Agency (PANI) or non-governmental organizations (NGOs). (<i>Source:</i> Progress report on the annual operational plan for the 2005 programmes and subprogrammes of the National Child Welfare Agency (PANI))

2. Please provide more information on measures taken to set up a functional mechanism of data collection on the issues covered by the Optional Protocol

There is no established mechanism for data collection, but statistical records are kept by the various institutions working in this field, such as the National Child Welfare Agency (PANI) - the lead agency for the specific and comprehensive protection of children and teenagers - and the judicial branch.

A major project is being conducted by the judicial branch together with the Paniamor Foundation: these bodies are preparing to implement a programme of action against trafficking in minors for commercial sexual exploitation (see the description in annex 1), with the following objectives:

To strengthen the ability of the Costa Rican Migration and Border Police to intervene in cases where children and teenagers are trafficked for commercial sexual exploitation, in accordance with the laws, standards and procedures in force. (This is based on the handbook drawn up under the project sponsored by the organization "End Child Prostitution, Child Pornography and Trafficking of Children for Sexual Purposes" (ECPAT) International, funded by the European Union and Ireland Aid, and intended for use by the Central American Commission of Directors of Migration Departments (OCAM));

To provide the competent prosecutors' offices with an information system to follow up on cases involving commercial sexual exploitation of children and teenagers and sex trafficking. (This is based on the prototype drawn up as part of the ECPAT International - European Union - Ireland Aid project);

To increase knowledge and social awareness of child sex trafficking in the country in order to mobilize the prevention and reporting of such problems.

3. Act No. 7899 entitled "Law against commercial sexual exploitation of minors" and revising a number of articles in the Penal Code was adopted in 1999, before Costa Rica's ratification of the Optional Protocol in 2002. In this respect, please indicate whether other steps have been taken to ensure that Costa Rican criminal law is in full compliance with articles 2 and 3 of the Optional Protocol. In particular, please indicate:

(a) What the status is of the bill that would criminalize possession of pornographic material mentioned in paragraphs 37 and 246 of the State party's report

Proposal No. 14568, which would reform various articles of the Penal Code relating to sexual offences, in particular commercial sexual exploitation, is currently before the Legislative Assembly. The objective is to bring the legislation into line with the commitments undertaken at the international level. It is currently in the Legal Affairs Committee. (The bill is attached in annex 2.)

(b) Whether, besides the prohibition of disseminating pornographic material to minors (article 174 of the Penal Code), there is also a provision prohibiting dissemination of child pornography (and not just selling as in article 173 of the Penal Code)

Article 173 of the Penal Code defines the manufacture and production of pornographic material using minors or images of minors. It also establishes penalties for the trade, transport or import of such material for commercial purposes.

(c) Whether there is a provision expressly prohibiting the sale of children (venta) for all the purposes indicated in article

3, paragraph 1 (a), of the Optional Protocol

Article 376 of the Penal Code imposes penalties of two-four years on anyone who engages in, promotes or facilitates the sale of a minor and receives any kind of payment, reward or economic or other compensation for such activities. An equivalent penalty is applied to anyone who provides such payment, reward or compensation in order to obtain a minor.

The prison term is from four to six years when the perpetrator is an ascendant or blood relation up to the third degree of affinity or consanguinity, the legal guardian or person with custody of the minor, or any other person who represents the minor. The same penalty is applied to a professional or public servant who engages in, promotes, facilitates or legitimizes the sale of a minor in any way. Such a professional or public servant is also subject to loss of the right to exercise his or her profession or job related to the offence for a period of between two and six years.

This law was reformed by Act No. 7999 of 5 May 2000, in its sole article.

In respect of specific offences:

(a) Sexual exploitation of the child. Article 160 of the Penal Code establishes that:

“Anyone who pays a minor of either sex or promises to pay or to provide him or her with an economic or other benefit in return for performing sexual or erotic acts shall be punished:

1. With 4 to 10 years’ imprisonment if the victim is under 12 years of age;
2. With 3 to 8 years’ imprisonment if the victim is over 12 but under 15 years of age;
3. With 2 to 6 years’ imprisonment if the victim is over 15 but under 18 years of age.”

(b) Transfer of organs of the child for profit

Under article 377 of the Penal Code, anyone who promotes or facilitates the trafficking of minors to hand them over for adoption with a view to selling their organs shall be punished with between 5 and 10 years’ imprisonment. (c) Engagement of the child in forced labour

In Costa Rica, minors under the age of 15 are not allowed to work, as established by article 78 of the Children and Adolescents Code, which reads: “The State shall recognize the right of adolescents over the age of 15 to work, subject to the restrictions imposed by this Code, international conventions and the law. This right may be restricted only when the work involves a risk or a danger to the person’s development, physical, mental or emotional health, or interferes with regular attendance at an institution of learning.” In addition to the above, article 101 of the Children and Adolescents Code sets out penalties for violations of this provision.

Article 172 of the same statute stipulates that: “Anyone who promotes, facilitates, or aids and abets the entry into or departure from the country of persons of either sex for the purpose of engaging in prostitution or of keeping them in sexual slavery or slave labour shall be punished with three to six years’ imprisonment. The penalty shall be between 4 and 10 years’ imprisonment if any of the circumstances enumerated with respect to aggravated procuring apply.”

4. Please indicate whether under the current legislation, Costa Rican courts can prosecute a Costa Rican national who has committed abroad a crime covered by the Optional Protocol (e.g., in case of crimes related to sex tourism committed by a national of Costa Rica abroad). Furthermore, please elaborate on proposal No. 14204 to amend article 6 of the Criminal Code to establish extraterritorial jurisdiction over sexual offences against minors; e.g., whether under this amendment a person - regardless of his or her nationality - could be prosecuted in Costa Rica for offences covered by the Optional Protocol committed abroad if he or she is in the State party’s territory

There is a bill before the Legislative Assembly entitled “Extraterritorial repression of sexual offences against children”, No. 14204 (attached as annex 3), but it has not yet become law.

The Penal Code contains the following provisions relating to extraterritoriality.

Article 5 establishes that Costa Rican criminal law shall apply to punishable acts committed in other countries when, first, they jeopardize the internal or external security of the State or its economic interests; and, second, they are committed against the public administration by public servants working in its service, regardless whether or not they are Costa Ricans.

Similarly, article 6 of the Penal Code offers the possibility of instituting proceedings for offences committed abroad and of applying Costa Rican law in such cases, when: first, their results affect or may affect all or part of the national territory; second, they have been committed by persons in the service of Costa Rica and have not been prosecuted in the place where the act was committed, owing to diplomatic or official immunity; and, third, they have been perpetrated against any Costa Rican national, or have breached his or her rights. Article 7 of the same Code stipulates that, irrespective of the provisions in force in the place in which the offence is committed and the nationality of the perpetrators, the following persons shall be prosecuted under Costa Rican law: anyone who commits acts of piracy or genocide; forges coins, securities, banknotes and other bearer instruments; takes part in the *trafficking of slaves, women or children*; engages in trafficking of narcotics or *obscene publications*; or commits other offences against the human rights set out in the treaties signed by Costa Rica, or in this Code.

Under article 8, for the offences covered by article 5 to be prosecutable in Costa Rica, action by the State shall suffice. For those covered by articles 6 and 7, the perpetrator must be present in the country. In cases covered by article 6, a complaint by the aggrieved person shall suffice to initiate the proceedings, and in cases covered by article 7 criminal proceedings may be instituted only

on the basis of an application by the competent bodies. A sentence handed down abroad for the above offences does not have effect as res judicata.

5. In the light of paragraph 112 et seq. of the State party's report, please clarify whether child victims of the acts covered by the Optional Protocol are always treated as such, or there are cases where they may be criminalized or subject to sanction

Victims of such offences cannot be treated as criminals or subject to sanction, and are always treated as victims. Significant efforts have been made by the bodies in the National Commission to Combat the Commercial Sexual Exploitation of Children and Adolescents (CONACOES) to ensure that this is the case. For example, there is a special prosecutor's office that deals specifically with sexual offences and domestic violence. Most prosecutors have been trained to work with young victims. In addition, the Judicial Office for Social Work and Psychological Counselling runs a support programme for children and young persons who are victims of sexual offences, which assists victims after they file their complaints. Guidelines have been drawn up to reduce the double victimization of minors in criminal proceedings.

In addition, the National Child Welfare Agency (PANI) and the Costa Rican Social Security Fund provide care for the victims of such offences.

6. Please update the Committee on the status of the joint project of the National Child Welfare Agency and UNICEF to draft basic guidelines for a national policy to eliminate commercial sexual exploitation of children mentioned in paragraph 141 of the report

In the absence of a national policy for children and adolescents, the project to draw up basic guidelines for a national policy to eliminate commercial sexual exploitation has been reconsidered.

National work plans have, however, been drawn up to combat this offence. This year, the first national plan against the commercial sexual exploitation of women and men was finalized, and a second national plan is currently being drafted with the support of the International Programme on the Elimination of Child Labour of the International Labour Organization (ILO/IPEC).

7. Please indicate the status of:

(a) The Bill submitted for Congress' approval on the seizure and confiscation of the proceeds from the crimes of procuring, smuggling or trafficking in minors for the purpose of sexual exploitation or the production and dissemination of child pornography

The Bill has not been submitted. Article 246 of the Migration and Aliens Act, Act No. 8487, establishes, however, that "Movable and immovable property, vehicles, instruments, equipment and other effects used directly in committing an offence established in the preceding article shall be confiscated or seized, as appropriate, by the judicial authority examining the case. If so requested, such property shall be put at the disposal of the Ministry of Internal Affairs and the Police, which, once measures have been taken to avoid possible compensation for its damage or destruction, may use it for their own purposes. The Ministry may also administer such property or place it under the trusteeship of a bank in the national banking system. In the event of a conviction, the property used in committing the offence shall be subject to confiscation and shall be registered in the name of the Ministry of Internal Affairs and the Police, and the transfer shall be recorded forthwith in the corresponding section of the national property registry".

(b) The proposal made to criminalize all forms of internal and cross-border smuggling or trafficking in persons

The Migration and Aliens Act, Act No. 8487, was adopted on 22 November 2005 and entered into force on 12 August 2006. Part XV of the Migration and Aliens Act reads as follows:

Part XV

Offence of illegal trafficking in persons

Description of the offence

Article 245

A prison term of two-six years shall be handed down on persons who:

(a) With the aim of illegal trafficking, conduct or transport persons for the purpose of entering or leaving the country, through locations not authorized by the Department, avoiding established immigration controls or using false information or falsified documentation to that end;

(b) With the aim of illegal trafficking in persons, house, hide or harbour foreigners who illegally enter or stay in the country.

The penalty established by this article shall be increased by one third when the perpetrator or accomplice is a public servant or when minors are used to commit such offences.

For its part, article 247 states that: "Foreigners who enter Costa Rican territory without meeting the provisions governing entry and who are illegally in the country either without any documentation or without proper documentation, who are victims, aggrieved persons or witnesses of acts of illicit human trafficking, illegal immigration or sexual exploitation, may be exempt from administrative liability and shall not be expelled or deported if they file a complaint with the immigration authorities against the perpetrators or accomplices of such trafficking, or cooperate with the competent police officials, providing them with essential information or

testifying, as the case may be, in the corresponding proceedings against the perpetrators. It shall be for the Department to decide whether to grant this status and it shall in turn arrange for the repatriation of such persons.”

8. Please indicate whether special training, particularly legal and psychological, is provided to persons working in the area of recovery and social reintegration of child victims of the offences under the Optional Protocol

The PANI training plan gives constant attention to the issue of commercial sexual exploitation. In 2005, 121 workshops were held as part of community projects, with the main objective of developing training procedures through education, art and information activities for the prevention of commercial sexual exploitation of minors; these were aimed at children and teenagers, community leaders, businessmen and police officers, with the objective of safeguarding the victims’ personal integrity and dignity. Eleven workshops were held on sexual exploitation for employees of PANI and for NGOs. In all, 132 activities were held on this subject, for a total of 200 participants. (*Source: Technical Management Office, G.T. 0008412006.*)

The employees of the Technical Management Office and its local and regional offices are being trained, in cooperation with the University of Costa Rica, in the cyclical model of combined responses in order to ensure comprehensive protection in cases of commercial sexual exploitation (the model is enclosed as annex 4).

Another important point relates to procedural protocols. There is now a protocol for the comprehensive protection of children in situations of commercial sexual exploitation, which has been drawn up by the technical staff of PANI. It sets out step-by-step the path to follow in such cases. In addition, a national protocol has been finalized for the repatriation of child and adolescent victims of human trafficking in Costa Rica, and some regional guidelines are currently being adopted by the corresponding bodies (see documentation in annex 5).

The Office of the Attorney-General has received support from the United States Government, which has sent experts from the Federal Bureau of Investigation (FBI) with extensive experience in the investigation of pornography. Prosecutors, police officers and computer engineers have received training, and there is coordination with police at the international level, including with the International Criminal Police Organization (Interpol) and FBI. In addition, ILO, through IPEC (the implementing agency for the programme to eradicate commercial sexual exploitation in Central America, the Dominican Republic and Panama) has made a genuine effort to ensure that these countries develop a criminal prosecution policy against human trafficking and, to that end, has carried out working seminars and technical meetings with prosecutors and police staff in the countries concerned.

Notes